



**Before the
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the 1969 Chevrolet, VIN
194679S727905, Purchased by Brian and Sharon
Lincks.

Case No. 96-H-1002

FINAL DECISION

By letter dated November 21, 1996, Brian and Sharon Lincks filed a request for hearing pursuant to sec 342.26, Stats., with the Division of Hearings and Appeals. In response to the request, a hearing was scheduled for January 23, 1997. Prior to the hearing, the parties submitted a stipulation of facts and agreed the matter could be decided based on the stipulation of facts and written argument. Accordingly, the hearing was canceled.

The parties filed simultaneous initial briefs on February 5, 1997. Reply briefs were due February 14, 1997. By letters dated February 6, 1997 and February 7, 1997, the Department of Transportation and the Lincks respectively advised the Administrative Law Judge that they did not intend to file reply briefs. On February 25, 1997, Attorney Roger Sage submitted a copy of an application for a Wisconsin title and registration for the subject vehicle. The application submitted by Mr. Sage differed from the one submitted by the parties as part of the stipulation of facts. By letter dated March 4, 1997, Attorney Steven J. Lownik responded to Mr. Sage's letter and on March 7, 1997, Mr. Sage filed another copy of the application allegedly received by the Wisconsin Department of Transportation and which contains additional processing information.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

Brian and Sharon Lincks, petitioners, by
Attorney Steven J. Lownik
Schober & Radtke, SC
PO Box 510155
New Berlin, WI 53151-0155

Wisconsin Department of Transportation, by
Attorney Charles M. Kernats
Office of General Counsel
PO Box 7910
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On March 27, 1997, the Administrative Law Judge issued a proposed decision. On April 11, 1997, Attorney Roger Sage, on behalf of Martin Running, filed objections to the proposed decision and a motion for a stay of the proceedings. The Department of Transportation filed a response to the objections on April 18, 1997, and the petitioners filed a response on April 23, 1997. Mr. Sage filed a reply brief on April 24, 1995.

Mr. Sage did not expressly object to any of the proposed findings of fact or conclusions of law. Rather he requested that the proceedings be stayed pending a decision from the United States Bankruptcy Court for the Western District on the applicability of sec. 402.326(3)(b), Stats., (the "consignment knowledge defense") with respect to the bankruptcy of David C. Larson and Valerie Larson, Bankruptcy case No. 96-32800-7. The bankruptcy court scheduled a consolidated hearing on the consignment knowledge defense for May 7, 1997. Mr. Sage alleged that a ruling by the bankruptcy court on the applicability of the consignment knowledge defense would constitute issue preclusion on this issue in the instant matter.

By letter dated May 12, 1997, Mr. Sage advised the Division of Hearings and Appeals that the bankruptcy court approved a settlement of the consignment knowledge defense issue without an adjudication of the issue. Accordingly, Mr. Sage withdrew his motion for a stay of the proceedings. There are no other objections to the proposed decision. The proposed decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

Prior to the hearing the parties filed a stipulation of facts. The stipulation included the following relevant facts:

1. Brian and Sharon Lincks purchased a 1969 Corvette, VIN 194679S727905 from Capitol Corvette. They paid \$25,990, plus sales tax, license and title fees, for a total of \$27,566.95 (exhibits 1, 1A, and 2). They received a copy of the used vehicle disclosure label (exhibit 4). They took possession of the Corvette on April 27, 1996, and have retained possession as of the date of the stipulation.

2. In April, 1996, Capitol Corvette was a motor vehicle dealer conducting business at 5400 King James Way, Madison, Wisconsin, 53719. Capitol Corvette was in the business of selling Corvettes. Capitol Corvette was a sole proprietorship and held

motor vehicle dealer license number 1047. David C. Larson was the owner and sole proprietor of Capitol Corvette. The Division of Hearings and Appeals revoked Capitol Corvette's motor vehicle dealer license on December 9, 1996 (exhibit 10).

3. The Division of Motor Vehicles of the Department of Transportation (DMV) is part of an agency of the State of Wisconsin and is authorized under sec. 218.01, Stats., to license, inspect, and regulate motor vehicle dealers in Wisconsin. The DMV also has the authority under chapters 341 and 342, Stats., to issue titles and registration for motor vehicles in Wisconsin.

4. When Capitol Corvette sold the 1969 Corvette, VIN 194679S727905 to Brian and Sharon Lincks, Martin John Running owned this vehicle. Capitol Corvette sold this vehicle on consignment for Martin John Running. The consignment agreement is exhibit 8. Capitol Corvette failed to pay Mr. Running the purchase price for this vehicle, in violation of the consignment agreement.

5. Martin John Running continues to assert ownership of this vehicle, since he has not been paid by Capitol Corvette. Mr. Running's attorneys, have sent letters to the DMV and to the Lincks claiming ownership of the Corvette (exhibits 5 and 9).

6. When Brian and Sharon Lincks purchased the Corvette from Capitol Corvette, they were not aware that the Corvette was owned by Martin John Running, and that the Corvette was sold on consignment by Capitol Corvette for Mr. Running. Brian and Sharon Lincks purchased the Corvette at Capitol Corvette's business premises, and they believed that Capitol Corvette owned this vehicle and had the authority to sell it. Capitol Corvette did not inform the Lincks that the Corvette was owned by Martin John Running and that it was being sold on consignment. Brian and Sharon Lincks did not examine the Corvette's title before purchasing it from Capitol Corvette. The DMV provided the Lincks with a copy of Mr. Running's title to the Corvette after they purchased it (exhibit 6).

7. Brian and Sharon Lincks submitted an application for title/registration to the DMV (exhibit 3).¹ Capitol Corvette told the Lincks that they would receive title and registration from the DMV within 6 to 10 weeks after submitting the application. The DMV has declined to issue Brian and Sharon Lincks title and registration for this vehicle, for the reasons stated in exhibit 11.

8. Exhibit 7 is a copy of a statement provided by Martin John Running to the DMV concerning the consignment of the Corvette to Capitol Corvette.

¹ As mentioned above. Attorney Roger Sage, on behalf of Martin John Running, submitted a copy of an application for title and registration which differs from exhibit 3. In his letter dated March 6, 1997, Mr. Sage refers to this application as a "forged title application." Mr. Running was given notice of these proceedings and chose not to participate. The evidence upon which the decision in this matter will be based is that exhibit 3 is the application submitted by the Lincks to the DMV of Transportation. Nevertheless, although Mr. Sage refers to the copy of the application he submitted as a "forged application," he does not explain the significance of this allegation. Mr. Sage does not allege any fraud or deception on the part of the Lincks with respect to their purchase of the subject vehicle from Capitol Corvette.

9. Neither Brian nor Sharon Lincks have ever worked for an automobile dealer, nor have they worked in the automotive industry. Neither Brian nor Sharon Lincks have previously owned a Corvette.

Based on the stipulated facts set forth above and for the reasons set forth in the "Discussion" section below, the following additional fact is found.

10. Brian and Sharon Lincks purchased the subject motor vehicle in good faith and without knowledge that the sale was in violation of the ownership rights of Martin John Running. Brian and Sharon Lincks are buyers in the ordinary course of business of the subject motor vehicle.

Discussion

Brian and Sharon Lincks have applied to the DMV for a certificate of title and registration for the subject motor vehicle. The Lincks purchased the vehicle from Capitol Corvette. Capitol Corvette had agreed to sell the vehicle on consignment for Martin John Running. Because Martin John Running informed the DMV he had not been paid by Capitol Corvette for the vehicle, a question of ownership of the vehicle was raised. Pursuant to secs. 342.11(1) and 342.12(2), Stats., the DMV refused to issue a title or registration to the Lincks for the subject motor vehicle.²

The Wisconsin motor vehicle code is silent with respect to issuance of a title and registration in this situation. The transaction is regulated by the Uniform Commercial Code. Pursuant to the sec. 402.403(2), Stats., "[a]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights

² Sec. 342.11(1), Stats., provides in relevant part

The department shall refuse issuance of a certificate of title for any of the following reasons

(1) The department has reasonable grounds to believe that

(a) The person alleged to be the owner of the vehicle is not the owner

(b) The application contains a false or fraudulent statement.

Sec. 342.12(2), Stats., provides in relevant part:

(2) If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department, subject to sub (3), shall either:

(a) Withhold issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or

(b) Issue a distinctive certificate of title pursuant to s. 342.10 (4) or 342.283

of the entruster to a buyer in ordinary course of business." In the instant matter, Martin John Running entrusted the subject motor vehicle to Capitol Corvette for the purpose of selling the vehicle. Accordingly, Capitol Corvette had the power to transfer ownership of the vehicle to a buyer.

Capitol Corvette has authority to transfer interest in the vehicle even if the consignor has retained title. In general, the interests of a consignor are not protected unless the consignor complies with one of the three alternatives set forth at sec. 402.326(3), Stats., relating to informing prospective creditors of the consignee of a potential security interest.³ Although Martin John Running still claims an interest in the vehicle, he has not actively participated in these proceedings, nor has he in any of the correspondence sent by his attorneys to the DMV or the Administrative Law Judge alleged that he complied with the provisions of sec. 402.326(3), Stats.

The Lincks purchased the vehicle from Capitol Corvette. Pursuant to the factual stipulation, they were unaware that Capitol Corvette was selling the vehicle on consignment. Even if the Lincks had been aware that the vehicle was being sold on consignment, there is no evidence that they should have suspected that Capitol Corvette did not intend to use the proceeds of this sale to pay the consignor or the sale was fraudulent in any manner.

The Lincks have the burden to prove that they are buyers in the ordinary course of business. The phrase "buyer in the ordinary course of business" is defined at sec. 401.201(9), Stats. Sec. 401.201(9), Stats., provides in relevant part that: "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest of a 3rd party in the goods buys in ordinary course from a person in the business of selling goods of that kind . . .'. Based on the stipulation of facts, it appears that the Lincks are good faith purchasers who purchased the vehicle without knowledge that the sale was in violation of the ownership rights of Martin John Running. The Lincks purchased the

³ Sec. 402.326(3), Stats., provides in relevant part

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which the person deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) Establishes that the person conducting the business is generally known by that person's creditors to be substantially engaged in selling the goods of others, or

(c) Complies with the filing provisions of ch. 409

vehicle from Capitol Corvette, a licensed motor vehicle dealer, which at the time of the purchase was a company in the business of selling used motor vehicles.

Conclusions of Law

The Administrator concludes:

1. Pursuant to sec. 402.403(2), Stats., Capitol Corvette had the power to transfer all of Martin John Running's ownership rights in the subject motor vehicle to a buyer in the ordinary course of business.
2. Brian and Sharon Lincks are buyers in the ordinary course of business of the subject motor vehicle. Pursuant to sec. 402.403, Stats., Brian and Sharon Lincks have acquired title and ownership of the subject motor vehicle.
3. Pursuant to secs. 346.26 and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

The Administrator orders:

The Division of Motor Vehicles of the Department of Transportation shall issue a motor vehicle title and registration to Brian and Sharon Lincks for the 1969 Chevrolet Corvette, VIN 194679S727905, which is the subject of this matter.

Dated at Madison, Wisconsin on May 15, 1997.

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By: 

David H. Schwarz
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